

Court Puts Off Hearing on HUAC; Justice Acts to Quash Subpoenas

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In a cryptically worded order, a three-judge Federal court here yesterday postponed its unprecedented hearing on the constitutionality of the House Un-American Activities Committee.

The judges issued the order about 11 a.m., 3½ hours before the hearing was to have started. The decree came as new disorders erupted at a HUAC subcommittee hearing four blocks away on Capitol Hill and also as American Civil Liberties Union attorneys served subpoenas on subcommittee Chairman Joe Pool (D-Tex.) and HUAC staff counsel Alfred M. Nittle to appear in court on the constitutional challenge.

Justice Department attorneys rushed to prepare a motion to quash the subpoenas, but the issue became at least temporarily moot when the three-judge court postponed the hearing indefinitely.

The postponement order, only 75 words long, left at-

torneys sharply divided about its underlying significance.

The order says: "In order that this court may have sufficient opportunity to consider whether or not this case should proceed before this specially constituted three-judge court or be remanded to a single District Court judge, it is ordered by the court, *sua sponte* on its own initiative, that the hearing now scheduled for 2:30 p.m. this date be postponed until further order of this court."

More Memoranda Asked

It then requested opposing attorneys to file additional memoranda on "this issue" by Monday.

Some Justice Department lawyers interpreted the language as a retreat from the court's earlier apparent eagerness to hear a full-dress constitutional challenge of HUAC's existence, the first of its sort in American history.

ACLU lawyer William M. Kunstler agreed glumly: "At

first glance, it doesn't look good to me."

But Arthur Kinoy, another ACLU attorney, said he saw "no substantive problem in the order." In fact, he added, the court's request for memoranda by Monday could be a move to expedite the hearing by avoiding paperwork delays encountered in the usual process of preparing for a civil trial.

Second Thoughts Suspected

Several lawyers said the three judges — Chief Judge David L. Bazelon of the U.S. Court of Appeals, Appellate Judge Charles Fahy and District Court Judge Howard F. Corcoran — may be having second thoughts about their authority to hear the case at all.

The Justice Department has vigorously urged this all along, contending that the separation of powers doctrine prohibits the court from enjoining a possible legislative function. It says a constitutional challenge cannot be made until a person has been threatened with criminal prosecution on a

charge of contempt of Congress.

The ACLU claims that the Supreme Court indicated last year in its Dombrowski decision that in the area of First Amendment rights of free speech, assembly and association, a person no longer has to wait for criminal sanctions before challenging a legislative function.

ACLU Sees 'Chilling Effect'

In the present case, ACLU contends that the mere service of HUAC subpoenas against some 13 Vietnam war critics has a "chilling effect" on the First Amendment rights on all persons who may dissent from Administration policy in Vietnam. They say the hearings are being conducted not to shed light on proposed legislation but to subject critics of the war to public "scorn and obloquy."

Federal law entitles a three-judge court to enjoin "the enforcement, operation or execution of any act of Congress for repugnance to the Constitution."

The Justice Department holds, however, that the U.S. Court of Appeals here has ruled that a three-judge court cannot stop Congress from debating or passing legislation, even when it is based on illegally obtained evidence.

By extension, the Department argues, the court cannot enjoin investigative functions of a congressional committee prior to criminal proceedings under contempt laws.